IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2453 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRA KANTILAL DESAI - Appellant(s)
Versus
UNION OF INDIA - Defendant(s)

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Appearance :

MS. KRUTI M SHAH for Appellant(s) : 1,
MRS Megha Jani for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/05/2007
ORAL JUDGMENT

ADMIT. Mrs. Megha Jani, learned advocate waives service of notice on behalf of respondent Union of India. With the consent of learned

advocates appearing on behalf of the parties, this Appeal is taken up for final hearing today.

2. Present Appeal has been filed by the appellants herein, original-applicants challenging the order passed by the Railway Claims Tribunal (Ahmedabad Bench), Ahmedabad, dated 5.5.2005 in Original Application No. 0300258 in dismissing the same.

3. The appellants herein filed Original Application No. 0300258 on 20th June 2003 for compensation of Rs. 4,00,000 under Section 124, 124-A & 125 of the Indian Railways Act, 1989 on account of untoward incident causing death of their son. It is the case on behalf of the appellants that as such there was a delay in filing the Claim Application and application for condonation of delay was submitted and the same was condoned by the learned Tribunal. The said OA No. 0300258 came up for final hearing before the Bench and a preliminary objection was raised

on behalf of the respondent that another Claim Application No. OA 0300153 is already filed by the very appellants for the same deceased person namely Tusharbhai for the same incident having taken place on 9.10.2000 and relating to the same train No. 9216 UP Saurashtra Janata Express train and/or for the same cause of action and the said fact has not been mentioned while submitting the Claim Application No. OA 0300258 and therefore it was requested to dismiss both the applications. It was submitted that a declaration was given in CA OA No. 0300258 that they have not filed any other application and therefore there is a false statement and declaration and therefore it was requested to dismiss both the applications as the applicants have not approached the Tribunal with clean hands. It is the case on behalf of the appellants that in fact an affidavit was filed on their behalf that they have not filed any other application except CA OA No. 0300258 and the application No. OA 0300153 is not filed by them and that they have never signed any Vakalatnama

or authorised the Advocate Shri S.A. Jadav who has filed OA 0300153 to file application on their behalf. It is the case on behalf of the appellants that in the affidavit dated 9.12.2003 it was specifically mentioned and declared by them that they have filed only one petition, i.e. OA No. 0300258 through their advocates AP Rajput and IJ Pratapgadhwala and therefore it was requested not to dismiss their Application No. OA 0300258. It appears that without even referring and/or considering the affidavit dated 9.12.2003 filed by the appellants the learned Tribunal by his impugned order dated 5.5.2005 dismissed both the applications, i.e., Claim Application No. OA 0300153 dated 23.12.2002 as well as CA OA No. 0300258 with cost of Rs. 5000 each by holding that claimants have filed two claim applications and there is suppression of material fact with regard to filing of the earlier application and also made a statement to the effect that they have not filed any other application. Being aggrieved and dissatisfied with dismissal of the

Claim Application No. OA No. 0300258 the appellants have filed the present First Appeal.

4. Ms. Kruti M. Shah, learned advocate appearing for the appellants has submitted that inspite of the affidavit dated 9.12.2003 to the effect that the appellants, original-claimants have not preferred any other application, except CA OA No. 0300258 and that they have never filed CA OA No. 0300153 and have never authorised and/or engaged advocate Shri SA Jadav who has filed CA OA No. 0300153 the learned Tribunal has passed the impugned order. It is submitted that the Tribunal at least ought to have verified the facts by holding necessary enquiry with regard to the filing of the application by advocate Shri SA Jadav without authority of the appellants and even without the knowledge of the appellants. It is submitted that when the impugned order has been passed dismissing the Claim Application without considering the affidavit dated 9.12.2003 the same requires to be quashed and set aside and

the matter should be remanded to the learned Tribunal for deciding CA OA No. 0300258 on its own merits more particularly when the Tribunal has earlier condoned the delay in preferring CA OA No. 0300258.

5. Mrs. Megha Jani, learned advocate appearing on behalf of the respondent is not in position to dispute that while passing the impugned order the Tribunal has not considered the affidavit dated 9.12.2003 which is referred to hereinabove. However she has submitted that if this Court proposes to remand the matter to the Tribunal for deciding the same afresh, a further direction be also issued directing the Tribunal to hold enquiry with regard to filing of Claim Application No. OA 0300153 by Advocate, Shri SA Jadav who is alleged to have filed the aforesaid Original Application without the consent and knowledge of the appellants and even without any signature of the appellants.

6. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that while dismissing the Claim Application No. 0300258 the learned Tribunal has not considered the affidavit of the appellants dated 9.12.2003 to the effect that they have filed only one petition, i.e. CA OA No. 0300258 through their Advocate AP Rajput and IJ Pratapgadhwala and that they have not filed any other application more particularly Claim Application No. 0300153 which is alleged to have been filed by advocate Shri SA Jadav. In fact the Tribunal ought to have considered the said affidavit and ought to have held necessary enquiry with regard to filing of OA No. 0300153 by Advocate, SA Jadav who is alleged to have filed the said application without the consent and knowledge of the appellants and even without any signature of the appellants in the matter. It is also required to be noted that as such the very Tribunal has earlier condoned the delay in favour of the appellants in preferring the Claim

Application. Under the circumstances, and more particularly when the affidavit dated 9.12.2003 of the appellant No.1 has not been considered and dealt with, the impugned order dated 5.5.2005 passed by the Tribunal dismissing the Claim Application No. 0300258 cannot be sustained and therefore the matter is to be remanded to the learned Tribunal for deciding the same afresh in accordance with law and on merits. At the same time, the Tribunal is also required to hold necessary enquiry with regard to filing of Claim Application No. 0300153 filed by said advocate SA Jadav for and on behalf of the appellants without the consent, knowledge and authority of the appellants.

7. For the reasons stated above, the impugned judgment and order dated 5.5.2005 passed by the Railway Claims Tribunal in dismissing Claim Application No. 0300258 is hereby quashed and set aside and the learned Tribunal is directed to decide and dispose of the said

application in accordance with law and on merits. Considering the fact that the application is of 2003 and that acccident has taken place in 2000, the Tribunal is directed to give priority to the said application and decide and dispose of the same as early as possible. The learned Tribunal is also directed to hold necessary enquiry with regard to filing of OA No. 0300153 by advocate Shri SA Jadav who is alleged to have filed the said application for and on behalf of the appellants without their consent and knowledge, their signature and authority considering the affidavit dated 9.12.2003. The Appeal is allowed to the aforesaid extent. No costs.

[M.R. Shah, J.]

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